

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	*	Docket Number:
	*	23-MJ-01033-JJM-1
	*	
	*	Buffalo, New York
v.	*	May 5, 2023
	*	2:09 p.m.
	*	
PHLYCIA HUNT,	*	ARRAIGNMENT
	*	
Defendant.	*	
	*	
* * * * *	*	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	TRINI E. ROSS, UNITED STATES ATTORNEY, By JOSEPH M. TRIPI, ESQ., Assistant United States Attorney, Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202, Appearing for the United States.
For the Defendant:	FEDERAL PUBLIC DEFENDER'S OFFICE By FONDA D. KUBIAK, ESQ., Assistant Federal Public Defender, 300 Pearl Street, Suite 200, Buffalo, New York 14202.
The Courtroom Deputy:	JOANNA DICKINSON

1 FTR Court Reporter: BONNIE S. WEBER, RPR,
2 Robert H. Jackson Courthouse,
3 2 Niagara Square,
4 Buffalo, New York 14202,
5 Bonnie_Weber@nywd.uscourts.gov.

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7 Proceedings recorded by mechanical stenography,
8 transcript produced by computer.

9 (Proceedings commenced at 2:09 p.m.)

10 **THE CLERK:** We are on the record in the matter of
11 United States versus Phlycia Hunt, criminal matter number
12 23-MJ-1033.

13 We're here for an initial appearance on a sealed
14 complaint for the Government. We have AUSA Joseph Tripi. The
15 defendant is present with FPD Fonda Kubiak.

16 From the United States Probation office, we have
17 Officer Andre McCray.

18 The Honorable Jeremiah J. McCarthy presiding.

19 **THE COURT:** Good afternoon, again, everyone.

20 **MR. TRIPI:** Good afternoon, Judge.

21 **MS. KUBIAK:** Good afternoon, Your Honor.

22 **THE COURT:** Ms. Hunt, you were named in a criminal
23 complaint dated March 21, 2023.

24 Have you received a copy of the complaint and the
25 supporting affidavit? Can you pull the microphone closer?

THE DEFENDANT: Yes. I have, yes.

1 **THE COURT:** All right.

2 Mr. Tripi, would you briefly summarize the charges and
3 the potential penalties?

4 **MR. TRIPI:** Yes, Judge. The complaint has two counts.
5 The date range is October 22nd -- to October, 2021 to
6 October 26, 2022, the complaint alleges that Ms. Hunt possessed
7 and attempted to possess Schedule II and Schedule IV controlled
8 substances during that time period.

9 The penalties associated with each count are one year
10 in jail, one year supervised release and a fine range from
11 \$1,000 up to \$100,000.

12 **THE COURT:** Thank you.

13 Ms. Hunt, you are legally presumed innocent of these
14 charges. At the present time, you have the right to remain
15 silent. You cannot be compelled to testify against yourself,
16 but anything that you do say may be used against you.

17 You have the right to be represented by an attorney
18 and if you cannot an afford an attorney, one will be appointed
19 for you.

20 Are you asking for appointment of an attorney?

21 Yes?

22 **THE DEFENDANT:** Yeah -- yes.

23 **THE COURT:** Okay. Would you raise your right hand,
24 please?

25

PHLYCIA HUNT, having first been duly sworn, testified as follows:

4 | **THE DEFENDANT:** I do.

5 | **THE COURT:** You may put your hand down.

6 | Are you currently employed?

7 | **THE DEFENDANT:** No.

8 **THE COURT:** Do you currently have any source of
9 income?

10 Do you currently have any property?

11 By shaking your head no, you've indicated that the
12 answer is no to all --

13 | **THE DEFENDANT:** Yes.

14 **THE COURT:** -- of those questions; is that correct?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** All right. Then based on your statements,
17 I find that you are eligible for appointment of counsel.

18 Ms. Kubiak, can your office accept the appointment?

19 **MS. KUBIAK:** Yes, Your Honor. I waive any further
20 reading and enter a plea of not guilty to the criminal
21 complaint.

22 **THE COURT:** Okay. She's also entitled to a
23 preliminary hearing before me to determine whether the charges
24 of the complaint are supported by probable cause.

25 | Do you wish to have a hearing?

1 **MS. KUBIAK:** Judge, I wish to defer that decision
2 until I'm in a better position to have an intelligent
3 conversation with the defendant.

4 **THE COURT:** Okay. You may defer that decision then.
5 Mr. Tripi, what's the Government's position on
6 detention or release?

7 **MR. TRIPI:** Judge, we're going to ask for temporary
8 detention.

9 If we can have a couple of days to prepare for a
10 detention hearing, there are -- the basis is she's a danger to
11 herself right now and a flight risk.

12 Danger being, as you can tell from the complaint and
13 from the observations, hopefully, in court, Ms. Hunt is
14 suffering from drug addiction here.

15 There is a detox facility at the jail, where she's at.
16 I'd ask to come back next week Wednesday for either a detention
17 hearing or for some other arrangements to potentially be made
18 and we will look into those at that time.

19 **THE COURT:** Okay. And this is a presumption case, is
20 it?

21 **MR. TRIPI:** It's not a presumption case, but it is an
22 A misdemeanor. And you can -- you can make findings -- you can
23 move on it on dangerousness and flight risk.

24 **THE COURT:** Okay. All right.

25 Ms. Kubiak, you wish to have a hearing. Is Wednesday

1 okay?

2 **MS. KUBIAK:** I do, Judge. Just for the record, I'm
3 not making any representations with respect to the Government's
4 basis for detention --

5 **THE COURT:** Right.

6 **MS. KUBIAK:** -- but I understand that it's temporary.

7 **THE COURT:** Right.

8 **MS. KUBIAK:** And we would ask for a May 10th date.

9 **THE COURT:** Okay.

10 Joanna, can you give us a time on May 10th?

11 **THE CLERK:** Yes, Judge. Judge, you have 9:30 and
12 11:30 available or you have availability after 1:30.

13 **MS. KUBIAK:** Judge, could we do 2 o'clock?

14 **THE CLERK:** We have something at 2. We are available
15 at 2:30.

16 **MS. KUBIAK:** Does that work?

17 **THE CLERK:** And after.

18 **MS. KUBIAK:** 2:30 is fine.

19 **MR. TRIPI:** Thank you.

20 **THE COURT:** Okay. Please confirm that. Since the
21 Government's motion for detention remains pending, time is
22 excluded between today and May 10th --

23 **MR. TRIPI:** We agree, Your Honor.

24 **THE COURT:** -- from the Speedy Trial Act calendar; is
25 that correct?

1 **MR. TRIPI:** Yes.

2 **MS. KUBIAK:** Yes, Your Honor.

3 **THE COURT:** Okay. One final matter: I'm going to
4 read a brief statement and I will follow it up with a written
5 order.

6 I hereby direct the Government to comply with its
7 obligations under Brady versus Maryland and its progeny to
8 disclose to the defendant all information, whether admissible or
9 not, that is favorable to the defendant; material either to
10 guilt or to punishment and known to the Government.

11 The possible consequences of noncompliance may include
12 dismissal of individual charges or the entire case; the
13 exclusion of evidence and professional discipline or court
14 sanctions on the attorneys responsible.

15 I'll be entering a written order more fully describing
16 this obligation and the possible consequences of failing to meet
17 it and I direct the Government to review and comply with that
18 order.

19 Mr. Tripi, can you confirm that the Government
20 understands its obligations and will fulfill them?

21 **MR. TRIPI:** Yes, Your Honor.

22 **THE COURT:** Thank you.

23 **MR. TRIPI:** Thank you.

24 **THE COURT:** Anything further today?

25 **MR. TRIPI:** No, Your Honor.

1 **MS. KUBIAK:** No, Your Honor.

2 **THE COURT:** Thank you. Defendant is remanded.

3 **MS. KUBIAK:** I'm sorry, Judge, I want to make sure
4 that the Marshals are aware of the circumstances surrounding her
5 current condition and ask that she get immediate assistance when
6 she is returned to the facility.

7 **THE COURT:** Right. Can somebody make sure that they
8 are notified?

9 **MR. TRIPI:** Yes, Your Honor.

10 **THE COURT:** Okay. Thank you.

11 **MS. KUBIAK:** Thank you, Judge.

12

13 (Proceedings concluded at 2:15 p.m.)

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"I certify that the foregoing is a correct transcript, to the
best of my ability, from the record of proceedings in the
above-entitled matter."

s/ Bonnie S. Weber
Signature

May 17, 2023
Date

BONNIE S. WEBER, RPR
Official Court Reporter
United States District Court
Western District of New York